

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

Date of Pronouncement: 20th March , 2017

Company Petition No. 8/59/15

In the matter of

The Companies Act, 2013 under section 59

Adesh Kaur

.....Petitioner

Versus

M/s Eicher Motors Ltd. & Ors

...Respondents

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

For Petitioner (s)

Mr. S.M.Sundaram, Advocate for petitioner.

For Respondent(s)

Mr. Pratab Venugopal and Mr. Purushottam K. Jha
and Mr. Sahil Khanna, Advocates for Respondent
no.3 (SEBI)

Mr. Joel and Mr. Anoop Dawar, Advocates for
Respondent no.1

ORDER

The present petition has been filed u/s 59 of the Companies Act 2013 praying for rectification of the Register of Members of Respondent no.1 Company and recording the name of the petitioner in respect of her 903 equity shares. The petitioner has also prayed for recovery of all her entitlements such as dividends, rights issue, bonus shares or any similar entitlement etc she has been deprived of.

CP No. 8/59/15

Adesh Kaur v. M/s. Eicher Motors Ltd. & Ors.

Page 1 of 9

2. The petitioner's is a classic case of having been defrauded of her valuable property and then being asked to run from pillar to post to prove her title.

Brief facts of the case are that the petitioner is a shareholder/member of Respondent no.1 Company and holds 903 equity shares vide registered folio no.31308. She continues to be in possession of her original share certificates. Her grievance stems from the fact that on account of a fraud perpetuated upon her, Respondent no.1 company, through their share transfer agents, first recorded her change of address to Mumbai from Sangrur upon a request by a fraudster and later issued duplicate shares without exercising due care and diligence. The said shares were then sold by the imposter to Respondent no.8, Sh. Vikas Tara Singh, resulting in replacing her name as the registered owner in their Register of Shareholders. Respondent no.7, who is alleged to be an impersonator fraudulently applied for change of address from Sangrur in the state of Punjab to Mumbai, Maharashtra on the basis on forged and fabricated documents. The impersonator then lodged a complaint reporting loss of the share certificates and prayed for issuance of duplicate shares. Within months of obtaining the duplicate shares, Respondent no.7 sold the same to Respondent no.8. All this was carried out behind the back of the petitioner and she was oblivious of the fraud being played.



3. It is submitted by the petitioner that on account of the illness of her in-laws, she remained pre-occupied and had to travel frequently to Dehradun to look after them and therefore did not remember where the share certificates were kept. Since she had the counter foils of the dividend receipt, on 05.07.2006 she enquired from Respondent no.1 about the formalities for opening a demat account and for transfer of her correspondence address to New Delhi. It was then that she was shocked to learn that her address had been changed to one at Mumbai and later duplicate shares were issued to Respondent no.7 (her impersonator) and sold to Respondent no.8. Upon her repeated complaints, the company realized that fraud had been played and filed a police complaint to investigate into the matter. It also emerged that several other investors had also been duped in a similar manner, pointing to a modus operandi by the insider employees of the company and/ or their agents, Respondent no.2. Despite the petitioner running from pillar to post, as her grievance remained un-addressed, she has petitioned this Tribunal for appropriate relief.

4. In the reply filed by Respondent no.1, they deny any liability and squarely lay it at the door steps of their Share Transfer Agents, Respondent no.2, duly approved by Respondent no.3. Needless to say that Respondent no.2 has found it convenient not to appear before this forum. Before this Bench, respondent no.1 has denied allegations of fraud, forgery and

manipulation of the documents and has submitted that as the facts of the case are disputed, complex and complicated, it would be beyond the summary jurisdiction of this Tribunal to adjudicate in respect of the same. It is further submitted that being a listed company in terms of SEBI guidelines, they were under an obligation to appoint a common agency (Registrar-cum-Share Transfer Agents), which in this case is Respondent no.2. This work of maintaining the register and looking after transfer of shares, be it in the physical form or in the demat, was mandatorily required to be entrusted to the SEBI approved agents, over whom they had no control. Having done so, they were no longer liable for maintaining the record of their shareholders or dealing with transfer of shares and issuance of duplicates certificates. It is further stated that as per their record the shares had been transferred and are presently registered in the name of one Mr. Vikas Tara Singh, Respondent no.8. It is also stated that their Share Transfer Agent had duly verified facts and after due diligence, recorded the change of address of the petitioner in their records from Sangrur to Mumbai and later issued the duplicate shares. They, however, do not deny that the petitioner has been pursuing redressal of the fraudulent transfer relentlessly. It is also their case that a criminal complaint has been registered on their initiative which is pending with the EOW Cell at Mumbai.

5. Notice was also issued to SEBI Respondent no.3, the statutory organization created to protect the interest of investors. Though the Ld. Counsel appearing on their behalf had filed an application for being dropped from the array of parties, it was found expedient to keep them in the loop and get necessary assistance as to what action is contemplated at their end in such cases of fraud. Ld. Counsel appearing for Respondent no.3 submits that the petitioner had not lodged a complaint directly with them but with this Bench, and since the matter was sub judice, they have refrained from enquiring into the matter. It was only after specific directions of the Tribunal that Respondent no.3 has initiated an enquiry in the alleged fraud perpetuated upon the petitioner. They have also apprised this Bench that in a similar complaint of one Mr. Manoj Dharamdas Shah, they had initiated enquiry proceeding against Respondents 1 and 2 which culminated in a finding that shares of the complainant Mr. Manoj Dharamdas Shah were fraudulently transferred to a third party. Directions were given for Respondent no.1 to reinstate the 100 shares to him.

6. Respondent no.1 has acknowledged that the petitioner is a victim of fraud. This is evident from the acknowledgement in their correspondence dated 11.07.2014 which is reproduced as under:

***“It appears that some unscrupulous person(s) have allegedly impersonated your identity and misrepresented documents before MCS in order to obtain duplicate Share Certificates and subsequently transferred them to third parties.*”**

EML is already enquiring from MCS further details in your case and would like to assure you that all documents and information available with MCS would be shared with you.

For your reference, the copies of the documents including the request letter dated 20th July 2012 for the issuance of the duplicate Share Certificates, the indemnity bond, affidavit, copy of FIR, attested Voter ID Card, address proof and the signature verification letter issued by Bank are being provided to you for your reference and record.

This unfortunate instance therefore requires the co-operation & action by both the parties (i.e. yourself and EML) in tandem and we would like to assure you of our full cooperation to you.

We will proceed to file a complaint with the police and request them to investigate the matter.”

7. Correspondence on record includes a letter dated 12.07.2014 sent by the R1 Company to the Police, reiterating its earlier complaints against one Mr. Umesh Kajmar and other unknown persons for committing the offence of cheating, theft, forgery, fabrication and impersonation in the present case.

8. The petitioner's complaint of being cheated is not an isolated case and appears to be the handiwork of insiders of Respondent no. 1 and/or their agents Respondent no.2. The petitioner should not be made to suffer for their acts.

9. The petitioner has further been able to satisfy this Bench that as per the guidelines of SEBI (Registrar to an issue and Share Transfer Agents) Regulations 1993, there was no diligence exercised by Respondent no.2 at the time of recording the change of address and issuance of duplicate

shares. The documents purportedly filed for this purpose appear forged on the very face of it.

10. The SEBI guidelines provide that a Company is liable for all acts of its Agents and cannot shirk the responsibility towards their shareholders. It mandates that under such circumstances the Respondent Company has to make good the loss by purchasing shares from the open market and transferring the same to the aggrieved shareholder.

11. The objection of Respondent no.1 that the case in hand cannot be adjudicated by the Tribunal is a frivolous attempt to escape any liability and or grant relief to the petitioner. This Bench fails to understand why the petitioner should resort to a Civil Court in order to prove her title. Apart from her oral testimony and her original share certificates, there is little else to be adduced in evidence even in a Civil Suit. She has her original certificates in hand. The Respondents are aware of the fraudulent acts perpetuated on her and have even initiated criminal proceedings. There is no reason for the petitioner to be deprived of her assets for the outcome of the criminal investigation or wait for the criminals to be brought to book. Her documents and her entitlement are not denied to by the Respondents. Under such circumstances, vague denial to escape any liability and to suggest that the petitioner initiates a Civil Suit is viewed as an attempt not to redress the grievance which has primarily arisen out of the fraud played by the employees of the Respondent Company or their Agents. Apart from

guidelines of Respondent no. 3 that unequivocally make the Respondent Company liable for the acts of their Register cum Share Transfer Agents, the law on the point is clear that the Principals are liable for the acts of their agents.

12. With respect to Respondent no.8, Mr. Vikas Tara Singh, the present registered holder, steps for service of notice were duly taken and he has chosen not to be present. It is does not need any specific observation, but the shares transferred to him, being stolen property cannot vests in him any title, muchless a perfect one.

13. Given the facts of this case, this Bench is of the opinion that the petitioner is entitled to rectification of the Register of Shareholders maintained by the Respondent no.1 Company in Folio no. 031308 registering her as the rightful owner of 903 shares, details of which are provided hereunder:

Folio No.	Certificate No.	Distinctive Numbers		Number of Equity Shares
		FROM	TO	
031308	058178	10591370	10591469	100
031308	058179	10591470	10591569	100
031308	058180	10591570	10591669	100
031308	058181	10591670	10591769	100
031308	058182	10591770	10591772	3
TOTAL NUMBER OF SHARES ALLOTTED				403

Folio No.	Certificate No.	Distinctive Numbers		Transfer Number*	Number of Equity Shares
		FROM	TO		
031308	098712	19404859	19404958	73683	100
031308	098713	19404959	19405058	73681	100
031308	098714	19405059	19405158	73682	100
031308	098715	19405159	19405258	73684	100
031308	098716	19405259	19405358	73685	100
TOTAL NUMBER OF SHARES					500

14. The original of these certificates, in the physical form, are still in possession of the petitioner. The petitioner may take adequate steps to get the same demated after due confirmation of the rectification of the Register having been carried out.

15. The petitioner would also be entitled to all dividends declared on the aforesaid shares which have not been passed on to her. She would also be entitled to any bonus shares or other benefits that may have accrued on these shares.

16. Petition stands allowed. No order as to costs.


(Ina Malhotra)
Member Judicial